

1 Anchun Jean Su (DC Bar No. CA285167)
2 Howard M. Crystal (DC Bar No. 446189)
3 Center for Biological Diversity
4 1411 K Street NW, Suite 1300
5 Washington, DC 20005
6 Tel: (202) 849-8399
7 Emails: jsu@biologicaldiversity.org,
8 hcrystal@biologicaldiversity.org
9 *Admitted Pro Hac Vice*

7 Tala DiBenedetto (NY Bar No. 5836994)
8 P.O. Box 371
9 Oceanside, NY 11572-0371
10 Tel: (718) 874-6734, ext. 555
11 Email: tdibenedetto@biologicaldiversity.org
12 *Admitted Pro Hac Vice*
13 *Attorneys for Plaintiffs*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**
15 **TUCSON DIVISION**

16 Center for Biological Diversity; and
17 Conservation CATalyst,

18 *Plaintiffs,*

19 v.

20 Kristi Noem, in her official capacity
21 as Secretary of Homeland Security;
22 U.S. Department of Homeland
23 Security; and U.S. Customs and
24 Border Protection,

25 *Defendants.*

Case No. CV-00365-TUC-AMM (JEM)

**PLAINTIFFS' CONTROVERTING
STATEMENT OF FACTS**

1 In accordance with LRCiv 56.1(b), Plaintiffs hereby submit this controverting
2 statement of facts in response to Defendants' Statement of Facts, ECF No. 19 ("SOF"):

3 1. Plaintiffs do not dispute SOF ¶ 1.

4 2. Plaintiffs do not dispute SOF ¶ 2.

5
6 3. Plaintiffs do not dispute that the Secretary made a determination that the
7 U.S. Border Patrol Tucson Sector is "an area of high illegal entry." SOF ¶ 3. However,
8 given that neither Congress nor the Secretary provided any criteria or standards regarding
9 what constitutes "an area of high illegal entry," Plaintiffs cannot speak to the veracity of
10 the Secretary's determination.
11

12 4. Plaintiffs do not dispute that the Secretary made a determination that there
13 is "an acute and immediate need to construct additional physical barriers and roads in the
14 vicinity of the border of the United States in order to prevent unlawful entries into the
15 United States in the project area pursuant to section 102(a) of IIRIRA." SOF ¶ 4. However,
16 because neither Congress nor the Secretary set forth standards or provide guidance
17 regarding when such construction is necessary, Plaintiffs cannot speak to the veracity of
18 the Secretary's determination.
19

20
21 5. Plaintiffs do not dispute that the Secretary made a determination that
22 "exercise of waiver authority under the IIRIRA was necessary 'to ensure the expeditious
23 construction of the barriers and roads in the project area[.]'" SOF ¶ 5. However, given
24 that neither Congress nor the Secretary provided definitions or guidance regarding the
25 terms "necessary" and "expeditious," Plaintiffs cannot speak to the veracity of the
26 Secretary's determination.
27

28 6. Plaintiffs do not dispute SOF ¶ 6.

7. Plaintiffs do not dispute that the Secretary’s waiver included the statutes listed in SOF ¶ 7 and “all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of” those statutes. However, Plaintiffs highlight that Defendants omitted from their list the National Environmental Policy Act, 42 U.S.C. § 4231 *et seq.*, which the Secretary enumerated in the waiver determination. Su Decl., Ex. 1, ECF No. 11-4, at 5-6. *See also*, Pls.’ Statement of Facts, ECF No. 11-3 ¶ 4 (listing the National Environmental Policy Act as one of the statutes waived); Defs.’ Controverting Statement of Facts, ECF No. 20 ¶ 4 (“Defendants do not dispute [Plaintiffs’] SOF ¶ 4”).

Dated: September 19, 2025

Respectfully submitted,

/s/ Anchun Jean Su

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hcrystal@biologicaldiversity.org

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Email: tdibenedetto@biologicaldiversity.org

Admitted Pro Hac Vice

Attorneys for Plaintiffs